REMARKS

In the Office Action mailed June 8, 2005, Claims 1-7 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Further, Claims 1-4 and 6 were rejected under 35 U.S.C. § 102(a) as being anticipated by Canadian Patent Application Publication No. 2,359,515 (hereinafter "Canadian '515"). Claims 1 and 3-5 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,036,244 to Huddle (hereinafter "Huddle '244"). Claim 6 was rejected as being unpatentable over Huddle '244 and, further, in view of either Mooney (U.S. Patent No. 6,145,525) or Ikeda et al. (U.S. Patent No. 4,878,322). Claims 3, 5, and 7 were rejected as being unpatentable over Canadian '515 in view of Hatziathanasiou (U.S. Patent No. 6,032,433). Lastly, Claim 6 was rejected as being unpatentable over Canadian '515 in view of either Mooney or Ikeda et al.

Applicants have carefully considered the comments provided in the Office Action and respectfully submit that the claims in the present application satisfy the requirements of 35 U.S.C. § 112, second paragraph, and also are defined over the prior art, for the reasons discussed below. Applicants respectfully request reconsideration and allowance of the application.

Rejection Under 35 U.S.C. § 112, Second Paragraph

The Office Action states:

> Each of claims 1 and 7 defines the anchoring wings as underlying the elongate body, (i.e., respective first and second connector), as well as defining the anchoring wings as merging into a vertical plane positioned along the longitudinal axis of the elongate body. However, it is not seen how the anchoring wings underlie the elongate body, (i.e., respective first and second connector).

Before discussing how the anchoring wings underlie the elongate body (i.e., the respective first and second connectors), it is important to note the description of the invention in the present application. The "integrally formed" first anchoring wing 40 is described, in part, at page 5, lines 5-14, as follows:

> Referring to FIGURE 1, an integrally formed first anchoring wing 40 underlies elongate body 12 and extends from first end 14 to second end 16. Referring to FIGURE 2, first anchoring wing 40 has a first side 42 and a second side 44. First side 42 of the first anchoring wing 40 protrudes past first side 18 of the elongate body. Referring to FIGURES 1 and 2, second side 44 of the first anchoring wing 40 merges into a vertical plane 46 positioned along longitudinal axis 22 of elongate body 12.

With respect to the "integrally formed" second anchoring wing 48, the present application at page 5, lines 14-22, states as follows:

> Referring to FIGURE 1, an integrally formed second anchoring wing 48 underlies elongate body 12 and extends from first end 14 to second end 16. Referring to FIGURE 2, second anchoring wing 48 has a first side 50 and the second side 52. First side 50 of second anchoring wing 48 protrudes past second side 52 of elongate body 12. Referring to FIGURES 1 and 2, second side 52 of second anchoring wing 48 merges into a vertical plane 46 positioned along longitudinal axis 22 of elongate body 12.

Together, the first and second anchoring wings 40 and 48 are further described at page 5, lines 22-30, as follows:

> Referring to FIGURE 2 first anchoring wing 40 and second anchoring wing 48 are angled outwardly and downwardly from elongate body 12 to define a concave engagement surface 54. Further, body 12 has a second underlying curvature 56 that is more acutely angled than concave engagement surface 54. First anchoring wing 40 and second anchoring wing 48 are further adapted with a reinforcing ridge 58 made of thicker polymer plastic and which runs along at longitudinal edges 60 and 62, respectively.

To aid in understanding the present application as originally filed, applicants provide herewith Exhibits A and B. Exhibit A is a copy of FIGURE 2 of the present application with a mark up in the form of a dotted line indicating an approximate delineation between the first and second connectors 24, 32 and the first and second anchoring wings 40, 48 that are integrally formed with and underlie the first and second connectors. Exhibit B is a copy of Figure 3 from Canadian '515.

Further, to understand how the anchoring wings underlie the elongate body (i.e., the first and second connectors), it is important to recognize that the description in the present application was written in part to distinguish the present invention from the apparatus shown in Canadian '515. The Canadian '515 reference is relevant to the inquiry under 35 U.S.C. § 112, second paragraph, in that a comparison of the present invention with the Canadian '515 apparatus helps demonstrate what persons of ordinary skill in the art would understand from the instant disclosure. In Canadian '515, as exemplified by Exhibit B, connectors 24 and 30 are shown having a uniform thickness. Anchoring wings 42 are simply joined to and extend outward from a bottom outside portion of the first and second connectors 24 and 30.

As explained in the present application at page 1, line 24 to page 2, line 16, the apparatus described in Canadian '515 has limitations when exposed to high winds. Beginning on line 34 of page 1 and continuing to page 2, the present application notes how the anchoring wings of Canadian '515, in high winds, would slap violently against scaffolding to which the apparatus was connected. Cracks would form where the wings 42 joined the bottom outside portion of the connectors and the anchoring wings would be lost.

To address this deficiency in the Canadian '515 apparatus, the applicants invented a new design for an anchoring apparatus in which the anchoring wings would not simply join at a bottom outside portion of the connectors, but, in fact, would be integrally formed with and extend underneath the connectors. In part, the new design eliminates the point of joining where the cracks would form. As exemplified by FIGURE 2 of the present application (Exhibit A hereto), the first and second wings 40 and 48 extend under the first and second connectors 24 and

30, and integrally add to the thickness of the adjacent portions of the first and second connectors. Because the material forming the anchoring wings 40 and 48 is integrally formed with the material forming the first and second connectors 24 and 32, a dotted line is used to illustrate this point. The Canadian '515 reference does not describe, nor does it suggest, extending the anchoring wings under the first and second connectors, which add to a thickness of the adjacent portions of the connectors 24 and 32, as shown in FIGURE 2 of the present application (Exhibit A hereto). In regard to the indefiniteness rejection in the Office Action, applicants submit that the detailed description of the invention (quoted in part above), in connection with FIGURES 1-4, clearly states how the integrally formed anchoring wings underlie the connectors of the elongate body. Just as the first and second connectors are integrally formed aspects of the elongate body 12 of the claimed apparatus, so are the first and second anchoring wings. The language used in the claims to define the structural relationship of the anchoring wings is sufficiently detailed to meet the requirements of 35 U.S.C. § 112.

The Office Action further states:

> Nor, is it seen how the first and second anchoring wings merge into a vertical plane positioned along the longitudinal axis of the elongate body. The specification describes and Figs. 1-4 show the anchoring wings as extending outwardly from the elongate body. As well, the anchoring wings are shown and described as "merging" into an outer edge of respective "connectors".

In response, applicants respectfully note the description of the invention at page 5, lines 11-14 and lines 19-22, where it states, in connection with FIGURES 1 and 2, that the first and second anchoring wings merge into a vertical plane 46 positioned along the longitudinal axis 22 of the elongate body 12. As exemplified in FIGURE 2 of the present application (attached hereto as Exhibit A), the anchoring wings 40 and 48, which are integrally formed and extend under the connectors 24 and 34, meet at the vertical plane 46 and, like the connectors 24 and 34, merge into the vertical plane 46. The vertical plane 46 is the dividing line between the back-to-back connectors 24 and 32. The fact that the anchoring wings also extend outwardly from the elongate body does not detract from the fact that the integrally formed anchoring wings extend under the respective connectors 24 and 32.

The Office Action next states:

> Further, claim 3 defines the anchoring wings as "made of a thicker polymer plastic than the first connector and the second connector". However, such does not appear to be the case. Particularly, if the anchor wings both underlie the elongate member as well as merge into a vertical plane positioned along the longitudinal axis of the elongate body.

In response, applicants note the description at page 3, lines 25-28, which states: "As will hereinafter be further described, the first anchoring wing and the second anchoring wing were also made of a thicker polymer plastic than the first connector and the second connector." An embodiment of this is described at page 5, lines 27-30 in which the application states: "First anchoring wing 40 and second anchoring wing 48 are further adapted with a reinforcing ridge 58 made of thicker polymer plastic and which runs along longitudinal edges 60 and 62, respectively." This is shown in particular in FIGURES 1-3 where it can be observed that the anchoring wings 40 and 48 are thicker than the first and second connectors 24 and 32. Again, with respect to Exhibit A attached hereto, the dotted line is artificial in that the material forming the first and second anchoring wings is integrally formed with the material forming the first and second connectors. Nevertheless, the thickness added by the first and second anchoring wings can be observed in relation to the adjacent portions of the first and second connectors 24 and 32.

The Office Action next states:

> "And, how does an under-surface of the first and second anchoring wings extend under the first and second connectors?"

In response, applicants note the discussion provided above and refer to FIGURE 2 of the application (Exhibit A hereto). To clarify this aspect of the invention, applicants have submitted an amendment above which describes the second side of the first anchoring wing as "extending under the first connector of the elongate body, integrally adding to a thickness of the adjacent portion of the first connector, and merging into the vertical plane." Similarly, an amendment is made in which the second side of the second anchoring wing is described as "extending under the second connector of the elongate body, integrally adding to a thickness of the adjacent portion of the first connector, and merging into the vertical plane."

The Office Action next states:

> Further, it is not clear as to what is being defined by ". . . to expose openings through the first anchoring wing adapted to receive fasteners whereby the elongate body is anchored to scaffolding" or ". . . to expose openings through the [second] anchoring wing adapted to receive fasteners whereby the elongate body is anchored to scaffolding" as is recited at lines 17-18 and 25-27 of claim 1 as well as lines 18-20 and 26-28 of claim 7. What, specifically, is being defined by "to expose openings through the first anchoring wing" or "to expose openings through the second anchoring wing"? Are openings formed in each of the wings or not? Or, do claims 1 and 7 define wings through which openings can be formed?

In response, applicants first refer to the language of the claims where, in Claim 1 (and, respectively, Claim 7), the first and second anchoring wings are both described as having a "first side . . . protruding past the first [or second] side of the elongate body to expose openings through the first [or second] anchoring wing adapted to receive fasteners whereby the elongate body can be anchored to scaffolding." The claims positively define "openings through" the first and second anchoring wings, that these openings are "expose[d]", and that these openings are “adapted to receive fasteners.” The fact that the anchoring wings protrude past the first (or second) side of the elongate body is what enables the openings to be exposed. Applicants also refer to the description of the invention at page 6, lines 17-24. The first and second anchoring wings, as claimed, indeed have openings formed in each of the wings.

The Office Action next states:

> "And, is the claimed apparatus anchored to scaffolding or not? Otherwise, what is being defined by 'whereby the elongate body is anchored to scaffolding'?"

In response, applicants have clarified both Claims 1 and 7 to state that the openings in the anchoring wings are adapted to receive fasteners whereby the elongate body *can be* anchored to scaffolding. In other words, the claimed apparatus is structurally configured such that it can be, but is not required to be, anchored to scaffolding.

In view of the above, applicants respectfully submit that the claims are definite within the meaning of 35 U.S.C. § 112, second paragraph, especially when considered in light of the description and the drawings. Applicants have endeavored to demonstrate where each and every aspect of the claimed invention is described in the specification in support of the claims. Nevertheless, the Examiner is invited to contact applicants' undersigned attorney if there is any further question in that regard. Since the claims are shown to particularly point out and distinctly claim the subject matter which applicants regard as their invention, the rejection of Claims 1-7 under 35 U.S.C. § 112 is requested to be withdrawn.

Rejections Under 35 U.S.C. § 102(a)

Claims 1-4 and 6 were rejected as being anticipated by Canadian '515. Applicants respectfully traverse this rejection in view of the detailed discussion provided above, and as shown by a comparison of Exhibit A (FIGURE 2 of the present application) with Exhibit B (Figure 3 of Canadian '515), where the patentable distinctions of the present invention are evident. In particular, with respect to Claim 1, applicants do not find either of the following two limitations in Canadian '515:

> an integrally formed first anchoring wing underlying the first connector of the elongate body and extending from the first end to the second end, wherein the first anchoring wing has a first side and a second side, the first side of the first anchoring wing protruding past the first side of the elongate body to expose openings through the first anchoring wing adapted to receive fasteners whereby the elongate body can be anchored to scaffolding, the second side of the first anchoring wing extending under the first connector of the elongate body, integrally adding to a thickness of an adjacent portion of the first connector, and merging into the vertical plane; and
>
> an integrally formed second anchoring wing underlying the second connector of the elongate body and extending from the first end to the second end, wherein the second anchoring wing has a first side and a second side, the first side of the second anchoring wing protruding past the second side of the elongate body to expose openings through the second anchoring wing adapted to receive fasteners whereby the elongate body can be anchored to scaffolding, the second side of the second anchoring wing extending under the second connector of the elongate body, integrally adding to a thickness of an adjacent portion of the second connector, and merging into the vertical plane.

Applicants submit that Claim 1 is patentable over Canadian '515. Only with impermissible hindsight can the Patent Office contend that Canadian '515 reads on Claim 1 by carving out a portion of the "C" channel connectors in Canadian '515 and calling it a part of an anchoring wing that extends under the connectors. First, such an interpretation belies the written description in the Canadian '515 reference and second, it is easily observed that the Canadian '515 connectors have a uniform thickness, even on the underside of the connectors. In contrast, it is easily observed in the present application that the thickness of the apparatus at the underside of the connectors is augmented by the additional material from the integrally formed anchoring wings that extend under the connectors. Federal Circuit case law is very clear that the Patent Office cannot use the disclosure in an applicant's patent application as a blueprint to apply a prior art reference to the claims. Simply put, applicants submit that the disclosure in the Canadian '515 reference does not anticipate Claim 1.

Further, Claims 2-4 and 6, which depend from Claim 1, are patentable for their dependence on an allowable base claim and for the additional subject matter recited therein.

Rejections Under 35 U.S.C. § 103(a)

Claims 1 and 3-5 were rejected as being unpatentable over Huddle '244. Applicants have carefully considered the Huddle '244 reference and submit that Huddle '244 lacks any teaching of anchoring wings. The lower lip 10 shown in Figure 5 of Huddle '244 does not constitutes an anchoring wing as claimed in Claim 1. Rather, the lower lip 10 is merely a lower portion of the "C" channel connector as represented by the combination of the upper and lower references 10.

Furthermore, applicants point out that the lower lip 10 shown in Huddle '244 does not have a "first side . . . protruding past the first [or second] side of the elongate body to expose openings through the first [or second] anchoring wing adapted to receive fasteners," as claimed in Claim 1. There is no teaching or suggestion in Huddle '244 of openings defined through the lip 10, which is not surprising as such would unavoidably interfere with the operation of the "C" channel connectors.

The further claim rejections in the Office Action are based upon combinations of either the Huddle '244 or Canadian '515 references, combined with the teachings of Mooney, Ikeda et al., or Hatziathanasiou. Applicants have carefully considered the Mooney, Ikeda et al., and Hatziathanasiou references and do not find that they cure the deficiencies discussed above with respect to Huddle '244 and Canadian '515. Claims 1 and 7 are patentable over the additional teachings of Mooney, Ikeda et al., and Hatziathanasiou, whether considered independently or in combination with Huddle '244 and Canadian '515.

As to the dependent claims, applicants respectfully submit that Claims 2-6 are patentable for their dependence on allowable Claim 1 as well as the additional subject matter recited therein.

CONCLUSION

In view of the foregoing amendments and arguments, applicants respectfully submit that the present application is in condition for immediate allowance. Reconsideration of the application at issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

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Date: September 8, 2005

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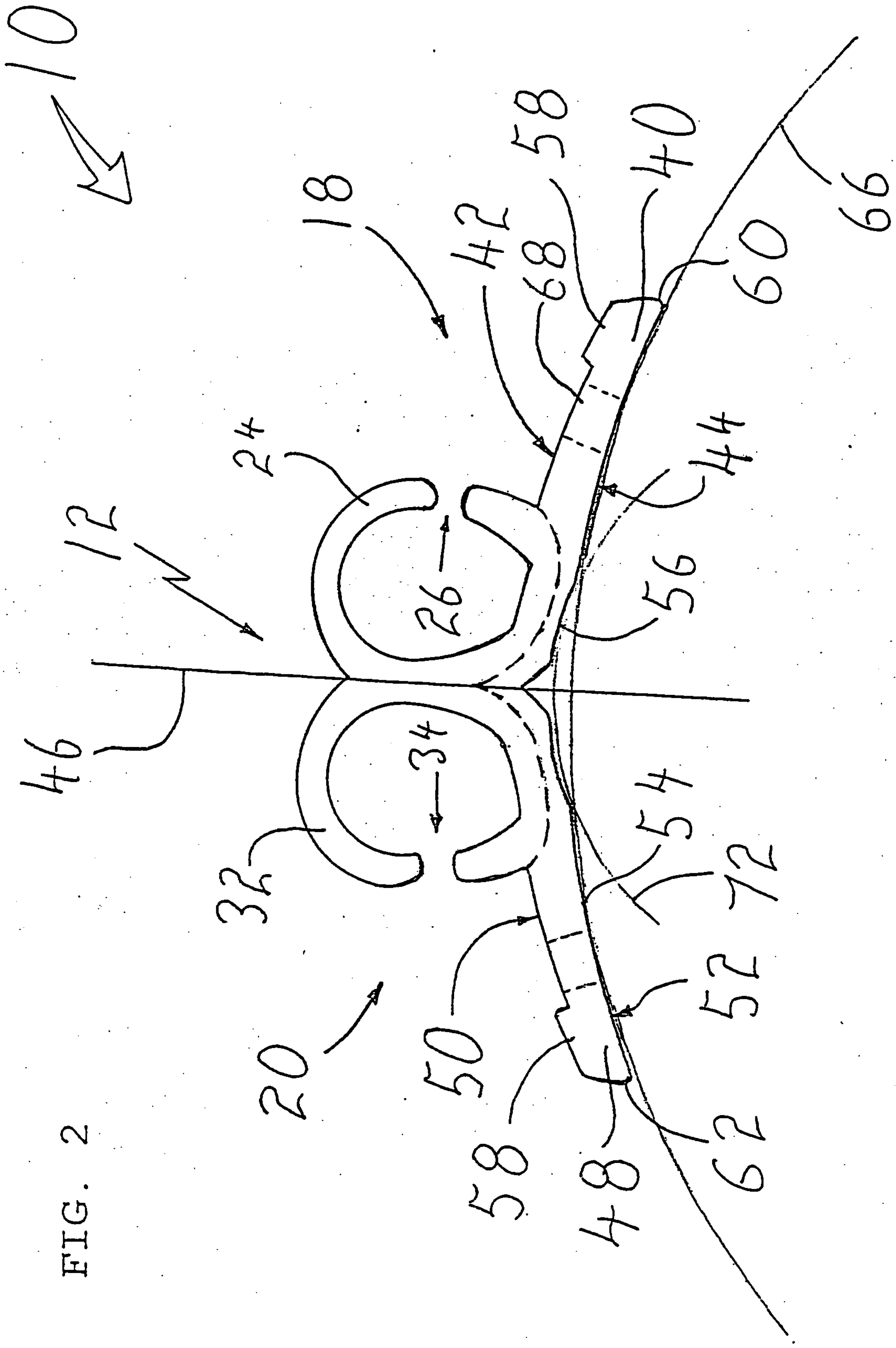

FIG. 2

EXHIBIT A

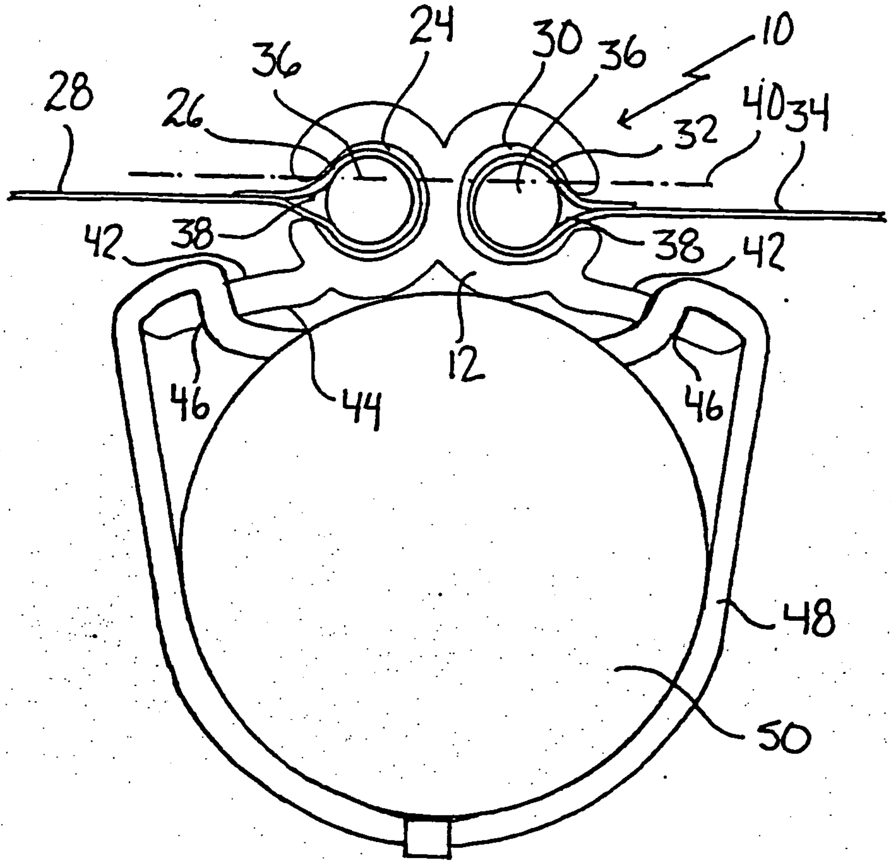

FIGURE 3

EXHIBIT B